

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

CORRECTED AND FILE

05 JUN 1964

v. [18] MIGUEL A. VEGA-COSME  
(name under which convicted)

U.S. DISTRICT COURT  
SOUTHERD DISTRICT OF NEW YORK

- DISTRICT OF PUERTO RICO, 150 CHARDON AVE., SAN JUAN, PR 00918

- (a) Not guilty ☒  
(b) Guilty ☐  
(c) Nolo contendere ☐

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- (a) Jury ☒ ☐
- (b) Judge only ☐

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9. If you did appeal, answer the following:

(a) Name of court United States Court of Appeals For the First Circuit

(b) Result Denied

(c) Date of result January 22, 2004

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?

Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court U.S. Supreme Court

(2) Nature of proceeding Petition for Writ of Certiorari

(3) Grounds raised Lower Court decision was contrary to Apprendi v. New Jersey and United States v. Edward; Application of Harmless Error Analysis violates Fifth Amendment

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result N/a

(6) Date of result N/a

(b) As to any second petition, application or motion give the same information:

(1) Name of court U.S Court of Appeals/First Circuit

(2) Nature of proceeding Recall Mandate

(3) Grounds raised Intervining Supreme Court decision Blakely v. Washington.

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(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒(5) Result Denied(6) Date of result December 10, 2004

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☒ No ☐(2) Second petition, etc. Yes ☒ No ☐

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

N/a

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all ground in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Petitioner was denied effective assistance of counsel

Supporting FACTS (state *briefly* without citing cases or law): In the present case  
Petitioner's counsel rendered ineffective assistance by  
failing to pursue and advise Petitioner to accept one of  
several plea offers made by the government. See Memorandum  
of law in support.

B. Ground two: Counsel Bonini rendered ineffective assistance  
due to conflict of interest. See memorandum in support.

Supporting FACTS (state *briefly* without citing cases or law): In the case at bar there  
exists a specter of a conflict of interest on the part of  
Petitioner's trial counsel because counsel and her son were  
subject of a federal criminal investigation during pre-trial  
and trial proceedings in Petitioner's case, and which thus  
involved conflict pitting attorney's personal interest against Petitioner

C. Ground three: Counsel rendered ineffective by requesting that  
Petitioner were joined to CCE-defendants.

Supporting FACTS (state *briefly* without citing cases or law): In the indictment Peti-  
tioner was named as defendant [18], and was supposed to be  
tried with the second group. However, counsel requested  
that he were joined in the CCE-group. See memorandum of  
law in support.

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D. Ground four: Ineffective assistance at sentencing.

Supporting FACTS (state *briefly* without citing cases or law): Counsel was ineffective  
by failing to object at sentencing on the ground that the  
sentence exceed the statutory maximum for the lesser crime  
or object charged in the conspiracy. See memorandum of law  
in support.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: \_\_\_\_\_

Ineffective assistance of counsel claims are addressed in post-  
conviction motion under 28 U.S.C. §2255.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?  
 Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Rosa I. Bonini-Laracuente, Caparra Terrace, S.J.

PR 00920

(b) At arraignment and plea Same

(c) At trial Same

(d) At sentencing Same

E. **GROUND FIVE:** Ineffective assistance of appellate counsel.  
See memorandum of law in support.

F. **GROUND SIX:** PETITIONER'S LIFE SENTENCE VIOLATES THE FIFTH AND  
SIXTH AMENDMENT RIGHT TO JURY TRIAL ACCORDING TO  
**APPRENDI, BLAKELY AND BOOKER.**  
See memorandum of law in support.

G. **GROUND SEVEN:** The Supreme Court's decision in **Booker** requires  
resentencing.  
See memorandum of law in support.

H. **GROUND EIGHT:** The Question regarding Blakely/Booker retroactivity.  
See memorandum of law in support.

I. **GROUND NINE:** Petitioner's Extraordinary Post Conviction Rehabili-  
tation Efforts.  
See memorandum of law in support.

J. **GROUND TEN:** Downward departure Due to Medical Condition.  
See memorandum of law in support.

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(e) On appeal Marcia G. Shein, 2392 N. Decatur Road, Decatur, GA. 30033(f) In any post-conviction proceeding Pro-se(g) On appeal from any adverse ruling in a post-conviction proceeding Pro-se

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

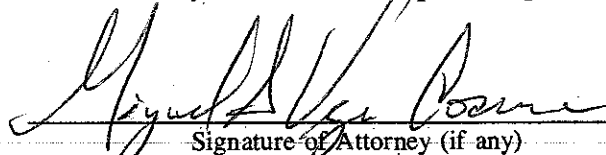
(a) If so, give name and location of court which imposed sentence to be served in the future: \_\_\_\_\_

N/a(b) Give date and length of the above sentence: N/a

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☒

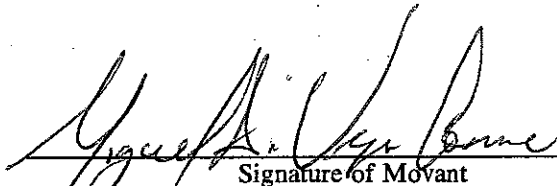
Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.


 Signature of Attorney (if any)

Miguel A. Vega-Cosme, pro-se

I declare under penalty of perjury that the foregoing is true and correct. Executed on

5/20/05  
 (date)


 Signature of Movant

Miguel A. Vega-Cosme, pro-se